



To: Columbia Board of Health
From Ronald J. Leone, MPCA Executive Director
Date: 9/8/16
Subject: Proposal To License Tobacco Retailers

The Missouri Petroleum Marketers and Convenience Store Association (MPCA) is a 300+ member statewide trade association which represents the majority of the convenience stores, gas stations and truck stops in Columbia and across Missouri.

Many of these companies are small, second or third generation family owned businesses with strong and deep community roots.

On behalf of our many members with locations throughout Columbia, please accept this memo as MPCA's formal written testimony in opposition to any efforts to license and further regulate Columbia retailers who sell tobacco products, alternative nicotine products and vapor products.

I. Statewide Issue Demands A Statewide Solution.

The licensing, regulating and taxing of tobacco products, alternative nicotine products and vapor products is a statewide issue that demands a statewide solution so that all adult consumers, businesses and retailers in Missouri are treated uniformly, fairly and predictably.

As a result, Columbia should not act in a "city-by-city piecemeal fashion" and instead should let these issues be addressed by the Missouri Legislature in Jefferson City.

II. Proposal Is A Tax & Thus Violates State Law.

State law, section 149.192, RSMo, preempts and renders "null and void" any local ordinance "increasing the taxation of cigarettes and tobacco products to the complete exclusion of any order, ordinance or regulation by any political subdivision of this state."

The proposal envisions a license and fee to sell tobacco products, alternative nicotine products and vapor products in Columbia. A fee is simply a tax by another name.

As a result, MPCA believes that the license fee is a tax on tobacco products, alternative nicotine products and vapor products and is thus prohibited and preempted by section 149.192, RSMo.

III. State Law Has This Covered & Thus The Proposal Is Not Needed.

► **Retailers Must Tell The State If They Plan To Sell Tobacco Products.** The Missouri Department of Revenue, Missouri Tax Registration Application, Form 2643A, question 9, requires that a retailer specify if they will be selling “alternative nicotine”, “cigarettes or other tobacco products”, or “e-cigarettes or vapor products”.

► **Retailers Must Have A State Sales Tax License.** State law, section 407.934, RSMo, requires that a retailer must have a state retail sales tax license in order to sell tobacco products, alternative nicotine products and vapor products.

► **State Law Prohibits Sales To Minors & Provides Penalties & Fines.** State law, section 407.931, RSMo, prohibits the sale of tobacco products, alternative nicotine products and vapor products to minors, and provides for penalties and fines for the clerk who sells to a minor as well as the owner of the retail location.

The clerk who sells to a minor can be fined anywhere from \$25 to \$250 depending on the frequency of the violation.

The owner can be fined the same as the clerk and substantial additional penalties can apply including a prohibition or “stop sale” on any sales of tobacco products, alternative nicotine products and vapor products for between 1 and 5 days.

► **Why Can't The City Simply Get A List Of Retailers From The State?** The City should be able to get a list of retailers selling tobacco products, alternative nicotine products and vapor products in Columbia from the Missouri Department of Revenue.

If not, the City could easily create its own list by adding a tobacco products, alternative nicotine products and vapor products “check-off box” to any required City business forms such as the local sales tax license or business occupancy documents.

IV. Proposal Hurts Consumers, Businesses and Local Tax Revenue.

Columbia specific regulations and taxation on tobacco products, alternative nicotine products and vapor products is counter-productive because it drives businesses, consumers, sales and thus tax revenue out of the City limits.

V. Consumer & Business Friendly Solutions.

► **Pursue This Proposal On A Statewide Basis.** MPCA is asking the Board of Health to not recommend that the Columbia City Council pass a local ordinance to require the licensing of retailers who sell tobacco products, alternative nicotine products and vapor products.

Instead, the City, through their lobbyists, should pursue this important issue uniformly, fairly and predictably on a statewide basis in the Missouri Legislature.

► **Simply Add A “Check-Off Box” To City Forms.** Let’s assume the goal of the proposal is to identify Columbia retailers who sell tobacco products, alternative nicotine products and vapor products to ensure better enforcement of tobacco laws and rules.

If the City is unable or unwilling to get this information from the Missouri Department of Revenue (see III above), the City could easily create its own list by adding a tobacco products, alternative nicotine products and vapor products “check-off box” to any required City business forms or paperwork such as the local sales tax license or business occupancy documents.

Sincerely & Respectfully Submitted,

Ronald J. Leone, Esq.
Executive Director,
Missouri Petroleum Marketers & Convenience Store Association (MPCA)
205 E. Capitol Avenue, Suite 200, Jefferson City, MO 65101
C: 573.864.5189
W: 573.635.7117, ext. 160
ron@mpca.org